

**REMARKS**

On January 11, 2007, Applicants received a Notice of Allowance for claims 1-9 in the above-referenced application. The Notice of Allowance cancelled all withdrawn claims, and entered amendments to the specification required for issuance. The amendments did not add new subject matter to the application. On January 18, 2007, Applicants received an Official Communication from the European Patent Office (“Communication”), which was issued on January 2, 2007, citing art that had not been previously presented in any other communication. More specifically, the Communication cited Patent Cooperation Treaty Pub. No. WO 97/06821 (‘821 Application) and United States Pub. No. 2002/177212 (‘212 Application). Applicants subsequently cited the art to the United States Patent Office on April 2, 2007, and paid the issue fee for the allowed claims on April 9, 2007.

On May 7, 2007, the Patent Office mailed a Notice of Non-Compliant IDS, which Applicants received on May 14, 2007, stating that the IDS had not been considered due to failure to pay the required fee. Applicants reviewed the applicable rules and determined that the fee was, in fact, required under 37 C.F.R. § 1.97(d). Therefore, Applicants made a bona fide effort under the rules to submit the art to the Patent Office, but the art was not considered by the Patent Office. For this reason, Applicants have petitioned the Patent Office to withdraw the above-referenced application from issue, and have submitted an IDS, which is attached herewith.

Applicants respectfully aver that the ‘821 Applications and ‘212 Application do not render claims 1-9 unpatentable. Claim 1 is directed to a method of detecting multi-drug resistance potential in test neoplastic cells by measuring the level of cell surface-expressed HSC70 protein on a test neoplastic cell and comparing the level of expression detected to a level of expression detected on a control, nonresistant neoplastic cell. Conversely, the Communication states that the ‘821 Application is directed to vaccine treatment of neoplasms (see Communication, pp. 3 and 4), and further states that the ‘212 Application is directed to inhibitors of HSC70 for the treatment of neoplasms (see Communication, pg. 4). Under this reasoning, neither reference discloses a method of detecting multidrug resistance potential by measuring the level of cell surface expressed HSC70 protein. In addition, these references also fail to disclose or suggest that HSC70 is detectable on the cell surface. Therefore, the ‘821

Application and '212 Application do not disclose the method recited in claim 1, or dependent claims 2-9.

Applicants position is further supported by the analysis of the applications detailed in the Communication (see Communication, pp. 3 and 4). The Communication does not assert the references against the substantially identical claims pending in the European Application that recite a method of detecting multidrug resistance potential, implicitly noting that neither reference discloses a method of detecting multidrug resistance in a test neoplastic cell by measuring the level of expression of cell surface-expressed HSC70 (see Communication, pp. 3 and 4). In fact, the Communication explicitly notes that claims reciting a method of detecting multidrug resistance potential by measuring cell surface-expressed HSC70 are patentable over the cited art (see Communication, pp. 4 and 5). Thus, the Communication asserts the '821 Application and '212 Application against claims not pending in the present application, and concedes that claims substantially identical to those pending in the present application are patentable (see Communication, pp. 4 and 5).

Accordingly, Applicants respectfully assert that the '821 Application and the '212 Application do not disclose the method recited in claim 1, or claims 2-9, all of which depend from claim 1.

### **CONCLUSIONS**

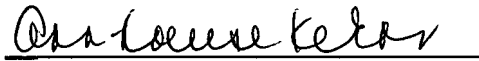
In view of the arguments set forth above, Applicants respectfully aver that the references cited in the European Communication, which are cited in the IDS attached herewith, do not disclose the subject matter recited in the presently pending claims. Applicants also submit that the pending claims are in condition for allowance.

No additional fees are due in connection with this response. However, please charge any underpayments or credit any overpayments to Deposit Account No. 08-0219.

Application No. 10/737,350  
Request For Continue Examination Dated 5/29/2007

If the Examiner believes that any further discussion of this communication would be helpful, please contact the undersigned at the telephone number provided below.

Respectfully submitted,

  
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